

Brian Swetland Deposition Excerpt

Highly Confidential-Attorneys' Eyes Only

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
Defendant.)
_____)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Deposition of BRIAN J. SWETLAND,
taken at 333 Twin Dolphin Drive, Suite 400,
Redwood Shores, California, commencing at
9:40 a.m., Thursday, July 7, 2011, before
Leslie Rockwood, RPR, CSR No. 3462.

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Page 1

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<p>1 license?</p> <p>2 A. The intent here, I believe, again, is that</p> <p>3 they are -- they are non-permissive, you know, licenses,</p> <p>4 which when combined with other work, you know, cause</p> <p>5 issues -- compliance issues around source release and</p> <p>6 redistribution and so on.</p> <p>7 Q. Okay. So this will be -- this is another</p> <p>8 earlier exhibit number, 72.</p> <p>9 What is Exhibit 72?</p> <p>10 A. It apparently is an email from an engineer on</p> <p>11 the Android team. Give me a moment to read it here.</p> <p>12 So this appears to be an email thread</p> <p>13 discussing Sun's announcement of open sourcing Java.</p> <p>14 Q. So Sun did open source Java at the end of</p> <p>15 2006; is that your recollection?</p> <p>16 A. I believe that's the case, though this may</p> <p>17 be -- this implies -- this implies that, yeah, the --</p> <p>18 what is it? Does it say specifically here? The email</p> <p>19 thread seems to imply that, yes, that's when it happened.</p> <p>20 Q. Mr. Baust wrote: "I would already be happy</p> <p>21 if we can just drop in their libraries, but still not</p> <p>22 sure it's compatible with their license choices."</p> <p>23 Would you have been happy to drop in Sun's</p> <p>24 libraries into Android at that point?</p> <p>25 A. Based on the specifics of their licensing,</p> <p style="text-align: right;">Page 138</p>	<p>1 understanding of the license options provided on this</p> <p>2 open source release were that the mobile -- you know, the</p> <p>3 mobile -- the smaller version of these libraries that</p> <p>4 would be appropriate for the Android platform had a</p> <p>5 license that was incompatible with the license chosen for</p> <p>6 the Android platform.</p> <p>7 Q. BY DR. PETERS: And the -- just because I'm</p> <p>8 having trouble getting a "yes" or "no" answer from you,</p> <p>9 the Sun core libraries were made available under license</p> <p>10 for no charge by Sun; is that right?</p> <p>11 MR. PAIGE: Object to the admonishment and to</p> <p>12 the form.</p> <p>13 THE WITNESS: The -- my understanding is that</p> <p>14 they were available under the GPL license, which does not</p> <p>15 have a direct monetary charge associated, but has a</p> <p>16 series of restrictions and requirements that, you know,</p> <p>17 restrict the use of, you know, software under that</p> <p>18 license.</p> <p>19 Q. BY DR. PETERS: And the -- and so even though</p> <p>20 Sun's Open Source Java was available without charge, the</p> <p>21 license restrictions were nevertheless not acceptable to</p> <p>22 Google.</p> <p>23 Do I have that right?</p> <p>24 MR. PAIGE: Object to the form.</p> <p>25 THE WITNESS: Again, it is difficult for me</p> <p style="text-align: right;">Page 140</p>
<p>1 no, because they would be incompatible with our policy of</p> <p>2 not using GPL for core libraries.</p> <p>3 Q. So I'm -- and so Google for Android, in any</p> <p>4 event, did not end up including Sun's open source Java</p> <p>5 core libraries in Android?</p> <p>6 A. The decision was made specifically not to do</p> <p>7 so because the term -- the terms of the licensing were</p> <p>8 inappropriate for the platform.</p> <p>9 Q. Because I do want to be very clear about it,</p> <p>10 Sun offered the core libraries for no charge, and Google</p> <p>11 did not accept them; is that correct?</p> <p>12 MR. PAIGE: Object to the form.</p> <p>13 THE WITNESS: Sun released their libraries</p> <p>14 under a specific license, which for the mobile version of</p> <p>15 their platform would have made it impossible for OEMs and</p> <p>16 potentially developers to develop commercial software for</p> <p>17 that platform, which made it a -- you know, from a</p> <p>18 license standpoint, useless for Android.</p> <p>19 Q. BY DR. PETERS: So it was to protect OEMs and</p> <p>20 commercial developers that Google did not incorporate a</p> <p>21 free-of-charge version of Sun's core libraries into</p> <p>22 Android; is that right?</p> <p>23 MR. PAIGE: Object to the form.</p> <p>24 THE WITNESS: Again, I can't necessarily</p> <p>25 speak for all the business-level decisions, but my</p> <p style="text-align: right;">Page 139</p>	<p>1 to speak for Google. From my understanding of the</p> <p>2 project goals, yes, the license terms were incompatible</p> <p>3 with the goals of the project.</p> <p>4 Q. BY DR. PETERS: You wrote in Exhibit 72, this</p> <p>5 November 13th, 2006 email: "It would be nice if somebody</p> <p>6 made a stink about this and called Sun on it should it</p> <p>7 turn out to be correct, which I expect is likely. Sadly,</p> <p>8 nobody ever does call them on stuff like this."</p> <p>9 What would you call Sun on?</p> <p>10 A. I believe what I'm referring to here is the</p> <p>11 fact they're generating significant press around how open</p> <p>12 and unrestricted and, you know, wonderful Java is, when</p> <p>13 in fact, the decision they clearly made here in, you</p> <p>14 know, creating, you know, field-of-use barriers to the</p> <p>15 language actually prevents it from being used openly in,</p> <p>16 you know, whole classes of products.</p> <p>17 That's a subtle issue, and it's not an issue</p> <p>18 that articles talking about how awesome it was that</p> <p>19 Sun -- or that Java is open source seemed to pick up on.</p> <p>20 Q. But Linux is licensed under the GPL, isn't</p> <p>21 it?</p> <p>22 A. The Linux kernel is licensed under the GPL,</p> <p>23 with a specific carve-out that says that user space code</p> <p>24 running on that kernel is not affected by that license,</p> <p>25 which is similar to the Classpath exception that Sun</p> <p style="text-align: right;">Page 141</p>

Josh Bloch

Deposition Excerpt

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ORACLE AMERICA, INC.,)
 Plaintiff,)
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GOOGLE, INC.,)
 Defendant.)
-----)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Deposition of JOSHUA BLOCH,
at 333 Twin Dolphin Drive, Suite 400,
Redwood Shores, California, commencing
at 9:34 a.m., Friday, July 8, 2011,
before Leslie Rockwood, RPR, CSR No. 3462.

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Page 1

1 Q. BY MR. JACOBS: Have you read this?

2 A. Almost done.

3 Q. This is -- 215 is an email string between you
4 and Josh Bloch -- sorry -- and Jesse Wilson.

5 A. Uh-huh. 16:41:19

6 Q. Dated December 7th, 2009.

7 A. Uh-huh.

8 Q. You write on December 7, 2009, at 2:26 p.m.:

9 "Jesse, ooh, you put your hand into the buzz saw."

10 A. Uh-huh. 16:41:32

11 Q. "Josh." Why did you write that?

12 A. Because he mentioned sort of a verboten
13 topic.

14 Q. What was the verboten topic?

15 A. Using OpenJDK instead of Harmony in Android. 16:41:43

16 Q. And why was -- why did you regard that as a
17 verboten topic?

18 A. Because I'd heard it discussed before and
19 quickly the discussions would always end with, you know,
20 we can't do that. Our partners can't use GPL code other
21 than the Linux kernel itself. 16:42:12

22 Q. And when you're referring to "our partners,"
23 you mean the handset manufacturers?

24 A. I don't know precisely which ones.

25 Q. But by "partners" here, you mean? 16:42:33

PX112

From: Dan Bornstein. Sent: 11/28/2006 4:53 PM.
To: [-] Ramy Dodin.
Cc: [-]
Bcc: [-]
Subject: Re: java open source.

> I forgot to ask you the other day, will Sun's recent announcement about open
> sourcing java happen soon enough to benefit Android?

It's not about timing so much as details. The licensing that Sun is
using for both SE and ME are incompatible with Android's needs. I'm
happy to talk further about it in person.

> Also there are some pics from my travails at rdodin.com if you're interested.

I am, thanks!

-dan

ORACLE
EXHIBIT 112
Ashley Scavyn, CSR No. 12010
Date 5/16/11
Witness:
BORNSTEIN

PX215

From: Joshua Bloch
 To: [] Jesse Wilson
 Cc: []
 Bcc: []
 Subject: Re: OpenJDK on Android?

Sent: 12/7/2009 2:26 PM

Jesse,

Oooh, you put your hand into the buzz saw.

Josh

On Mon, Dec 7, 2009 at 2:03 PM, Jesse Wilson <jessewilson@google.com> wrote:

Open source licensing folks,

I work on core libraries for the Android's Dalvik VM. Our code is derived from Apache Harmony, an Apache-licensed implementation of Java SE. Although we're steadily improving the quality of our code, it will be a long time until we meet feature and quality parity with OpenJDK. It's also a waste of Google's engineering talent to be maintaining two independent copies of the Java class libraries: Google3 and App Engine both use OpenJDK, but Core and Android both use Harmony. I'd like to be certain that OpenJDK's class library is not an option for Android.

As I see it, the primary hurdle is OpenJDK's licensing. It's licensed under GPL+Classpath Exception; whereas Android is Apache licensed. But our Linux kernel is GPL, so there's a small precedent for mixed licensing in Android. As I understand it, OpenJDK's classpath exception gives us additional flexibility:

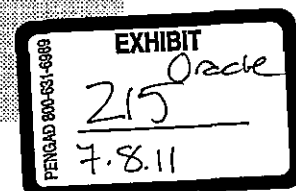
- * We can use OpenJDK's class libraries on our Apache-licensed VM.
- * We can distribute binaries of OpenJDK's class libraries alongside our Apache-licensed modules, such as the android.widget UI module.
- * Applications written for an Android that include OpenJDK's class library would not be subject to the GPL.

Can you confirm?

Another consequence of using OpenJDK in Android would be logistical complexity. Maintainers of that code (such as myself potentially) would need to avoid mixing GPL and Apache-licensed code. We'd probably want to work in a separate source repository; I suspect this is how our Linux kernel folks already work.

Are there other hurdles preventing Android from adopting OpenJDK? If it's actually an option perhaps we want to figure out the costs and risks of switching.

Thanks,
 Jesse



TX0154

From: Jason Harinstein.
To: [-] Andy Rubin.
Cc: [-] Amin Zoufonoun.
Bcc: [-] .
Subject: Re: Java News from Sun.

Sent: 11/12/2006 10:16 PM.

Our hurry up and wait strategy worked;-)

Andy, have you had the licensing discussion w/Shari yet?

On 11/12/06, Andy Rubin <arubin@google.com> wrote:

Sun open sources java

This has got to bring the price down.

(we still need skelmir because GPL license (sun's license) doesn't work for us.

Begin forwarded message:

From: "Chris DiBona" <cdibona@google.com>
Date: November 12, 2006 8:10:15 PM PST
To: "Andy Rubin" <arubin@google.com>, opensource-team <opensource-team@google.com>
Subject: Fwd: Java News from Sun

FYI

----- Forwarded message -----
From: Simon Phipps <Simon.Phipps@sun.com>
Date: Nov 12, 2006 6:28 PM
Subject: Java News from Sun
To: Trusted-Friends@webmink.net

Tomorrow, Sun will be making an announcement about the Java platform that many of us have been anticipating eagerly. We wanted you to hear it direct from us rather than through the press, so I'm sending you the news release that will go to the press tomorrow. If you have any questions, please do not hesitate to contact me.

Best regards

Simon

Simon Phipps, Chief Open Source & Free Software Officer, Sun Microsystems

Tel: +1 650 352 6327/USx69758 Web: www.webmink.net , AIM: webmink

Current timezone: UTC-8 (California)

SUN MICROSYSTEMS PRESS RELEASE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRIAL EXHIBIT 154

CASE NO. 10-03561 WHA

DATE ENTERED _____

BY _____

DEPUTY CLERK

Sun Open Sources Java Platform and Releases Source Code Under GPL License Via NetBeans and Java.net Communities

Builds on Success of NetBeans and OpenSolaris to Establish New Communities For Open Source Development of Java Technology

SANTA CLARA, CALIF., -- November 13, 2006 -- Sun Microsystems, Inc. (NASDAQ: SUNW), the creator and leading advocate of Java(TM) technology, today announced it is releasing its implementations of Java technology as free software under the GNU General Public License version two (GPLv2). Available today, are the first pieces of source code for Sun's implementation of Java Platform Standard Edition (Java SE) and a buildable implementation of Java Platform Micro Edition (Java ME). Details are available at: at <http://www.sun.com/opensource/java>. In addition, Sun is adding the GPLv2 license to Java Platform Enterprise Edition (Java EE), which has been available for over a year under the Common Development and Distribution License (CDDL) through Project GlassFish(TM) at <http://glassfish.dev.java.net>.

This announcement represents one of the largest source code contributions under the GPL license (under which the GNU/Linux operating system is also distributed) and the open sourcing of one of the industry's most significant and pervasive software platforms. With over 3.8 billion Java technology enabled devices, Java technology is showing explosive growth, appearing in volume everywhere. From mobile phones and smart cards to enterprise applications and supercomputers, Java technology provides a unifying platform for software innovation. By open sourcing Java software, while offering commercial products with indemnity for our customers, Sun expects Java technology to become even more pervasive.

"By open sourcing Sun's implementation of Java technology, we will inspire a new phase of developer collaboration and innovation using the NetBeans(TM) Integrated Development Environment (IDE) and expect the Java platform to be the foundation infrastructure for next generation Internet, desktop, mobile and enterprise applications," said Rich Green, executive vice president of Software at Sun. "With the Java Development Kit (JDK(TM)) released as free software under the GPL, Sun will be working closely with distributors of the GNU/Linux operating system, who will soon be able to include the JDK as part of the open source repositories that are commonly included with GNU/Linux distributions."

"Everyone has been expecting that one day Sun would open source Java technology, but no one expected just how far they'd go – GPL. A bold move, and a great opportunity both for Sun and for free and open source software," said Tim O'Reilly, founder and CEO of O'Reilly Media.

Java SE

Sun is releasing three significant software components today for the ongoing development of Sun's open source implementation of Java SE in the Java.net community: Java HotSpot(TM) technology, the Java programming language compiler (javac(TM)) and JavaHelp(TM) software. Sun expects to release a buildable JDK in the first quarter of 2007, following established free software community practices for licensing virtual machines and their associated libraries. Java HotSpot technology and javac are two of the most important elements of Java SE; Java HotSpot technology is the Sun implementation of the Java Virtual Machine (JVM(TM)) and the core component of the Java Runtime Environment (JRE), which translates Java code to the specific operating system and chip architecture, allowing Java software to run

everywhere and javac is the compiler that analyzes Java source code for correctness and generates proper bytecodes for execution. JavaHelp software is the documentation system to complement the JDK.

These first components of the OpenJDK(TM) project will allow developers to experiment with the compiler, try out new language features, learn how a world-class virtual machine is built, port the JVM to new hardware architectures and operating systems, fix bugs and contribute new features. Through the OpenJDK project, developers will be able to directly influence the future of the JDK implementation, participate with their peers in an open community and help take Java technology where it hasn't been before.

Java ME

Available immediately in the Java.net community, is the source code for Sun's feature phone Java ME implementation, the next generation version of the platform that currently enables rich mobile data services in over 1.5 billion handsets. Also available is Sun's source code for the Java ME testing and compatibility kit framework, the foundation for Sun's Java ME compatibility tests. Later this year, Sun will release additional source code including its advanced operation system phone implementation and the framework for the Java Device Test Suite.

Sun is releasing these technologies as free software in order to accelerate the development and evolution of the platform, reduce fragmentation and drive down development costs throughout the Java ME ecosystem. In addition, this move will provide easy access to the latest versions of Java ME platform technologies and, for the first time, enable the whole Java ME community to follow the activities of and participate in the development of these technologies.

Java EE

Sun is also announcing that it is now releasing the source code for Project GlassFish (part of the GlassFish Community) under a dual open source license. In addition to CDDL, Project GlassFish will also be available under GPLv2 in the first quarter of 2007. By adding a second license, we simplify the process of combining and distributing GlassFish code with other GPL licensed communities. By offering all of Java under a common license, developers can now more easily distribute updated versions of Java SE, Java EE and Java ME together.

NetBeans and Sun Development Tools

The NetBeans IDE can dramatically simplify getting started with JDK development because the open source components have already been configured as NetBeans projects. Developers can download the source code, open it in the NetBeans IDE, and use the Build Project command to build it. For further information and a step-by-step tutorial go to: <http://nb-openjdk.netbeans.org>. In addition, an application developer project is available as part of the Mobile & Embedded community, with links to resources such as the NetBeans Mobility Pack, the Java ME authoring tool that delivers a whole new level of sophistication and ease for drag-and-drop screen design. Sun is also making available the world-record producing Sun(TM) Studio development environment for the development of the platform-specific native code in the Java HotSpot virtual machine.

The recently announced NetBeans 5.5 contains a variety of new features, including: Java Persistence API and JAX WS 2.0 productivity tools, Subversion support, and enhancements to the NetBeans GUI Builder (formerly known as Project Matisse). NetBeans 5.5 is the first and only freely available IDE to provide comprehensive support for

Java EE 5, the industry standard for developing portable, robust, scalable, and secure server-side Java applications.

Developer Support and Services

Sun offers Java technology and Solaris(TM) Operating System developers a complete line of developer how-to help, product support and updates, and training that reduces time and risk for the entire application lifecycle--from development through deployment through Sun's Developer Services programs (<http://developers.sun.com/services>). Developers are also encouraged to join the Sun Developer Network Program, at no cost, by registering online at: <http://developers.sun.com/register>.

About Sun Microsystems, Inc.

A singular vision -- "The Network Is The Computer"(TM) -- guides Sun in the development of technologies that power the world's most important markets. Sun's philosophy of sharing innovation and building communities is at the forefront of the next wave of computing: the Participation Age. Sun can be found in more than 100 countries and on the Web at sun.com.

--

Open Source Programs Manager, Google Inc.

Google's Open Source program can be found at <http://code.google.com>

Personal Weblog: <http://dibona.com>

--

Jason Harinstein
Corporate Development
Google, Inc.
jharinstein@google.com
t. 650.253.7946
f. 650.963.3337

TX0156

From: Cédric Beust ☺ Sent: 11/13/2006 7:12 AM.
 To: [-] David Turner.
 Cc: [-] android-team@google.com; cdibona@google.com.
 Bcc: [-]
 Subject: Re: [android-team] Fwd: Java News from Sun.

Here is the current word:

Unmodified GPL2 for our SE, ME, and EE code. **GPL2 + Classpath exception for the SE libraries.** Javac and HotSpot and JavaHelp code drops today. The libraries to follow, with pain expected fighting through the encumbrances. Governance TBD, but external committers are a design goal. No short-term changes in the TCK or JCP.

Broader than I expected.

I would already be happy if we can just drop in their libraries, but still not sure it's compatible with their licensing choices.

--
 Cedric

On 11/13/06, David Turner <digit@google.com> wrote:

Very frankly, I wouldn't be surprised if the Classpath exception did not cover ME, there are millions of royalties to be made in cellphones, set-top-boxes and even Blue-Ray players, including the PS3 (yes, all interactive features of Blue Ray require a JVM along with standard J2ME class libraries) !! Though I doubt it will be enough to pay back their investments in Java in less than 20 years.

On 11/13/06, Brian Swetland <swetland@google.com> wrote:

[Andy Rubin <arubin@google.com>]
 > "However, Sun is employing the so-called "classpath exception," a
 > license addition that allows the company to place limits on the
 > software that the GPL covers, Green said.
 >
 > The effect is that programmers who create applications using Sun's
 > open-source versions of Java can use choose a different license for
 > their applications, he said. "
 >
 > > <http://news.com.com/Sun+picks+GPL+license+for+Java+code/>
 > > 2100-7344_3- 6134584.html?tag=nefd.top

Aha, here's the trick (same article):

"In the case of Java SE (Java Standard Edition), we're enhancing (the GPL) with the classpath exception," Green said. "So when you're working on top or shipping applications with the (Java) libraries and virtual machine, you're not affected by the Java license."

If that really means *only* SE (which seems likely based on his phrasing), and ME is GPL-only, it effectively prevents you from using it in most any embedded product unless the entire thing is GPL.

Cute.

It'd be nice if somebody made a stink about this and called Sun on it

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DEPUTY CLERK

(should it turn out to be correct, which I expect is likely). Sadly, nobody ever does call them on stuff like this.

Brian

android-team mailing list
android-team@google.com
<https://mailman.corp.google.com/mailman/listinfo/android-team>

android-team mailing list
android-team@google.com
<https://mailman.corp.google.com/mailman/listinfo/android-team>

--
Cédric

android-team mailing list
android-team@google.com
<https://mailman.corp.google.com/mailman/listinfo/android-team>

TX0415

From: Dan Bornstein. Sent: 2/26/2007 10:18 AM.
 To: [-] Ray Chen (陳敬立).
 Cc: [-] Steve Horowitz.
 Bcc: [-]
 Subject: Re: Greetings from the Android VM team.

[Note: cc'ed to Steve Horowitz.]

Ray Chen wrote:

> Now I'm back from paternity leave and chinese new year.

Hi Ray. Happy New Year! (I don't know if you're aware, but Chinese New Year is a fairly big deal in San Francisco.)

> I'd talked to my boss about my OKR. He
 > suggested me to allocate my time on a monthly basis. That is, one month for
 > android (50%), and the other month (50%) for taiwan related project.

That sounds like a good idea in general to me. Please see below about some short-term planning.

> Now I have a few questions about the assignment:

>
 > (1) Will android claim 100% Java compatibility?
 > (2) How do we claim 100% compatibility without licensing Sun's TCK?

We won't. We are aiming for compatibility, but we aren't trying to get "certified." The important things for us are being able to run the applications we write and providing a familiar development environment for our third-party developers. Neither of these things require us to pass the TCK.

> IMHO, releasing android under Apache license is a wise decision. However,
 > I'm not that sure why we need to release the JVM/Java library under Apache
 > license. Mobile phone vendors may be interested in customizing android for
 > their handsets, but JVM/Java library should be a de facto standard. I'm
 > wondering if any vendors would want to customize the standard Java API?
 >
 > If our intention is to freely redistribute JVM/Java library, maybe GNU
 > classpath will be a better solution?

We talked about using GNU Classpath, but we ended up deciding against it. On the licensing front, although Classpath would *probably* be okay (in my opinion), the lawyer-advised consensus is that there is potential for trouble. The same situation holds with Sun's release of their own class libraries (under a very similar license). Although it does mean more work for us, the decision to stick strictly to Apache-licensed (and truly Apache license compatible) sources really does simplify things quite a bit and puts us on more solid legal ground. It's also one less reason for a potential handset vendor or carrier to be concerned about using Android. (That is, this is not about their potential desire to modify the core Java libraries but rather their desire not to get sued.)

Thankfully, though, we are not the only people who see value in an Apache-licensed set of Java class libraries. There is now a project within Apache itself -- Apache Harmony <<http://harmony.apache.org/>> -- aimed at creating an Apache-licensed desktop/server-oriented Java-compatible VM and libraries. We will almost certainly import code from that project and contribute back to it during the course of Android development. Note, though, that we can't just take blindly

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DEPUTY CLERK

from Harmony, since its server-focused nature probably means that there are design decisions in it that favor speed in the speed-space tradeoff in a way that won't make sense for use on a relatively memory-impooverished platform such as Android. It's also worth noting that the Android Java libraries we have so far, incomplete as they are, already have stuff that isn't yet included in Harmony.

All that being said, it seems like we are about to sign an agreement with one or two third-party Java technology companies to acquire their library implementations and get them to implement some code from scratch as well. So, in terms of your monthly schedule, I think it makes sense for you to sit out Android for March and synch back up in April. That gives us time to finalize the deal(s) and figure out how best to use Googlers' time -- such as yours -- in finally getting solid libraries onto the platform. There will certainly be plenty to do!

Thanks,

-dan